

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



June 6, 2006

**Agenda ID #5715
Ratesetting**

TO: PARTIES OF RECORD IN APPLICATION 05-06-026

This is the draft decision of Administrative Law Judge (ALJ) Walker. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure," accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages.

Comments must be filed with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 2.3 and 2.3.1. Electronic copies of comments should be sent to ALJ Walker at gew@cpuc.ca.gov. All parties must serve hard copies on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail or other expeditious methods of service. The current service list for this proceeding is available on the Commission's web site, www.cpuc.ca.gov.

/s/ ANGELA K. MINKIN

Angela K. Minkin, Chief
Administrative Law Judge

ANG:avs

Attachment

Decision **DRAFT DECISION OF ALJ WALKER** (Mailed 6/6/2006)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Sea Planes, Incorporated (VCC-85) for approval of the expansion of its Certificate of Public Convenience and Necessity to include non-scheduled service to and from all navigable harbors and coves on Catalina Island to and from Marina Del Rey, Avalon and Two Harbors, all of which points are either along existing authorized routes or within a mile or two.

Application 05-06-026
(Filed June 9, 2005)

OPINION DENYING PETITION FOR MODIFICATION

Pacific Adventure Cruises, Inc. (Pacific) on May 3, 2006, petitioned the Commission to modify Decision (D.) 06-01-008. That decision, issued on January 12, 2006, granted the unopposed application of Sea Planes, Incorporated (Sea Planes) to amend its operating certificate to add non-scheduled vessel service to and from all navigable harbors and coves on Santa Catalina Island.

The Sea Planes application was granted after Sea Planes and Pacific executed a private settlement agreement that prompted Pacific to withdraw its protest to the application. Pacific now asks that the decision be amended to include the terms of the settlement "in order to provide for monitoring and enforceability of the settlement terms by the Commission." (Petition, at 4.)

Sea Planes opposes the petition to modify, arguing that the Commission has closed the proceeding, that Pacific did not appeal the decision, that the settlement is a private agreement between private parties, and that, in any event,

“the PUC is not in the business of enforcing private settlement agreements between private parties.” (Opposition, at 2.)

We agree with Sea Planes and by this order dismiss the petition for modification. This Commission rarely addresses contract disputes between parties, even when the parties are utilities, deferring instead to the civil courts on such matters. The Commission has stated, “Since the Commission has no jurisdiction to award damages, complaints alleging breach of contract are better served through the civil courts.” (*Crystal River Oil and Gas v. Pacific Gas Electric Co.*, D.00-10-005, citing *Penaloza v. P.T.& T.*, 64 CPUC 496, 497.)

Moreover, there was no settlement approved by the Commission in D.06-01-008 under Rule 51, *et. seq.* of the Rules of Practice and Procedure. Thus, the terms under which Pacific withdrew its protest were not considered in D.06-01-008 and are not even part of the record since the settlement was a private agreement between the parties only.

Pacific may file a civil action if it believes that the terms of its private agreement with Sea Planes have been breached. Alternatively, if Pacific develops information that warrants a Commission investigation or hearing, then it may file a complaint against Sea Planes pursuant to Rule 9 of the Commission’s Rules of Practice and Procedure.

Comment on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure.

Assignment of Proceeding

John Bohn is the Assigned Commissioner and Glen Walker is the assigned ALJ in this proceeding.

Findings of Fact

1. D.06-01-008 was issued on January 12, 2006, granting the unopposed application of Sea Planes to add additional vessel service to and from Santa Catalina Island.
2. Pacific petitions to modify D.06-01-008 to add terms of a private settlement agreement between it and Sea Planes.

Conclusions of Law

1. The Commission rarely addresses contract disputes between parties, deferring instead to the civil courts on such matters.
2. Pacific has failed to show good cause for its requested modification of D.06-01-008.
3. The petition for modification should be denied.
4. Application 05-06-026 should be closed.

O R D E R

IT IS ORDERED that:

1. The petition for modification of Decision 06-01-008 filed by Pacific Adventure Cruises, Inc., is denied.
2. Application 05-06-026 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document current as of today's date.

Dated June 6, 2006, at San Francisco, California.

Antonina V. Swansen

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